

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

Date of decision: 16.12.2019

CWP-12085-2013

POLLY SHERA

...PETITIONER

V/S

PRESIDING OFFICER AND OTHERS

..RESPONDENTS

WITH CWP-4187-2014

**INDIAN COUNCIL FOR CHILD WELFARE U.T BENCH
CHANDIGARH**

...PETITIONER

V/S

POLLY SHERA AND ANR

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Anil Shukla, Advocate,
for the petitioner in CWP No. 12085 of 2013,
for respondents in CWP No. 4187 of 2014.**

**Mr. K.K.Gupta, Advocate,
for the petitioner in CWP No. 4187 of 2014,
for respondents No. 2 and 3 in CWP No. 12085 of 2013.**

AUGUSTINE GEORGE MASIH, J.

**By this order, I propose to decide two writ petitions CWP No.
12085 of 2013 titled as **Polly Shera vs. Presiding Officer, Labour Court-
cum-Industrial Tribunal, Chandigarh and others** and CWP No. 4187 of
2014 titled as **Indian Council for Child Welfare U.T. Bench, Chandigarh****

vs. **Polly Shera and another**, wherein challenge has been made to the Award dated 15.01.2013 (Annexure P-3) passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh, both by the workman as well as the Management. The workman is aggrieved of the order which grants him lump-sum compensation of ₹1,60,000/- in lieu of reinstatement as he is seeking relief of reinstatement along with full back wages and continuity of service and the Management is praying for rejection of the reference. For convenience, the facts are being taken from CWP No. 12085 of 2013.

2. Briefly, the facts are that the petitioner-workman was appointed as an Accounts Officer on 18.01.1986 by the respondents-Management after an interview held on 04.01.1986 and he was granted the regular pay scale w.e.f. 01.04.1990. He had served the respondents for more than 20 years without any complaint. However, his services have been terminated vide order dated 30.01.2006 on the ground that he has been working against a non-existent post and without the approval of any competent authority. Assertion has been made by him that persons junior to him have been retained in service and fresh appointments were also made for the post of Accounts Assistant after his termination. No show cause notice was served upon him or enquiry was held nor was any retrenchment compensation given being in violation of the principles of natural justice and Section 25-F of the Industrial Disputes Act, which is unsustainable in law. He has prayed for reinstatement and continuity in service.

3. On the other hand, the stand of the Management is that the workman was not appointed against the sanctioned posts nor was his appointment approved by the competent authority ever i.e. the Executive Committee/Vice President of the Society. He does not fulfil the

qualifications for the post of Accounts Officer as he was only a B.Com Graduate and did not have the requisite experience. Rather it is asserted that he was appointed as an Accounts Officer on a purely temporary post on a consolidated salary of ₹1200/- per month. The qualification for appointment of Accounts Assistant is B.Com and 5 years experience.

4. As regards the initial appointment of the petitioner is concerned, it is asserted that he was appointed with the consent of M/s H.K.Chugh for running the Lottery Scheme on Rehabilitation Children (Prayas) w.e.f. 18.01.1986 and his appointment was approved at the level of the General Secretary of the Council which is not the competent authority. The Lottery Scheme ended in December, 1988 but the workman continued as Accounts Officer illegally with the Management as per the directions of the Honorary Secretary and also got a regular pay scale of ₹1600-2660 with allowance since 01.04.1990. The post of Accounts Officer does not exist with the Management and the said post has also not been approved by the Finance Department. Before termination of the services of the petitioner, on a writ petition being filed by one of the co-workers, a Sub-Committee of the council was constituted to look into the appointment of the workman where discrepancies with regard to his appointment and his continuation as an Accounts Officer were found. Petitioner was issued a show cause notice in the light of the above facts and after considering his reply, he was terminated by giving him one month salary in lieu of notice. The ground for termination was that the procedure, as prescribed for appointment of permanent/regular employees in the Management, has not been followed and, therefore, it was concluded that his entry into service was back door entry as no advertisement was issued nor any names called for from the

Employment Exchange especially when the post of Accounts Officer did not exist nor was the appointment or post approved by the competent authority.

5. On the basis of the pleadings of the parties, following issues were framed by the Labour Court, the same read as follows:-

“(1) Whether the respondent is an industry as defined under Section 2 (j) of the Industrial Disputes Act?OPM

(2) Whether the claimant is a Workman?OPM

(3) Whether the reference is not maintainable?OPM

(4) Whether services of the Workman were terminated by the management illegally, if so, to what relief the Workman is entitled to, if any?OPM

(5) Whether the termination is as per the terms of appointment letter, if so, its effect?OPM

(6) Relief.”

6. As regards Issue No. 1, Chandigarh Council for Child Welfare was declared as an 'Industry'. As regards Issue No. 2, Polly Shera was found to be a 'Workman'. Issue Nos. 3 to 5 were decided together in favour of the workman by holding that the reference was maintainable and the termination of the services of the workman was found to be illegal. However, because of the non-existence of the sanctioned post of Accounts Officer, instead of reinstating the workman, compensation of ₹1,60,000/- was assessed, which was ordered to be paid to the workman within a period of two months from the date of publication of the Award or within three months of the date of Award whichever is earlier, failing which he would be entitled to interest @12% per annum till the realization of the same. This

Award dated 15.01.2013 has been challenged by the workman as well as the Management.

7. It is the contention of the learned counsel for the workman that the Labour Court having come to a conclusion that the termination of the services of the workman was not in accordance with the provisions of the Industrial Disputes Act and he having served the respondents for more than 20 years should have granted the relief of reinstatement in service with continuity thereof with full back wages instead of granting him lump-sum compensation of ₹1,60,000/-, which is not acceptable. He contends that the finding, as has been recorded by the Industrial Tribunal with regard to there being no regular post available of Accounts Officer, cannot be accepted as with the efflux of time, the necessity and the utility of the post has been proved beyond doubt and mere formal approval having not been received from the competent authority i.e. the Executive Committee/Vice President of the Society, cannot now be taken as a ground after 20 years to terminate the services of the workman. It is a mala-fide act on the part of the Management to have terminated the services of the workman at this belated stage. He, therefore, prays for reinstatement of the petitioner in service with all consequential benefits.

8. On the other hand, counsel for the Management has asserted that the Court below has wrongly proceeded to hold Polly Shera to be a workman. In this regard, he has referred to the main functions as detailed in Ex. M6-1. It is asserted that he was performing the tasks which were managerial and in supervisory capacity. His duties were to prepare the budget estimates of all the programmes, checking of cash books, accounts statements, processing and settling audit objections and to ensure speedy

efficient disposal of work by Accounts Assistants. He was also required to deal with important and complicated cases and to watch for loans and advances and their recovery as per the time schedule. He was to check and pass all expenditure bills and other bills. Accordingly, he asserts that the claimant was not a workman. Assertion has also been made that the appointment of Polly Shera in the year 1986 was primarily for the purpose of Lottery Scheme and he was also performing some clerical/accounts work. Lottery Scheme was altogether discontinued in December, 1988 but thereafter, he was continued in service by the Honorary Secretary of the Society at his own level. No approval has been sought for from the competent authority and he continued as such. Even the regular pay scale, which was granted to the claimant, was without approval of the competent authority and at the level of the Honorary Secretary alone, which again was not sustainable nor was it in consonance with the Instructions applicable with regard to appointment of the staff in the Society. The appointment being not in consonance with the requirement as per the Instructions nor there being a regular post of Accounts Officer available, the claimant could not have been continued on the post which did not exist.

9. As regards the compensation, which has been granted, it is asserted by the counsel for the Management that the appointment of the claimant being not in consonance with the Statutory Rules and it being illegal, there was no question of granting him the benefit of Section 25-F of the Industrial Disputes Act especially when no post of Accounts Officer existed on the rolls of the Society. He further contends with reference to the Memorandum of Association that the aims and objects of the Society were in the nature of a Welfare Society. He asserts that the compensation, as

granted, should not have been granted and the reference should have been rejected. Prayer has, thus, been made for setting aside the Award impugned.

10. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings and the records of the case but do not find myself in agreement with any of the contentions, which have been raised by both the counsel for the parties, but agree with the Award passed by the Industrial Tribunal-cum-Labour Court, Chandigarh.

11. It is apparent on the basis of the fact that initially Polly Shera was appointed in the year 1986 primarily for the Lottery Scheme which was discontinued in December, 1988. The appointment on the post of Accounts Officer, as made, was for a temporary purpose. It is not in dispute that there was no sanctioned post of Accounts Officer. In the absence of a sanctioned post, Polly Shera could not have been granted the regular pay scale of the said post which actually did not exist. The evidence, which has come on record, clearly indicates that neither the initial appointment of Polly Shera-claimant was approved by the competent authority nor was the post of Accounts Officer got approved by the competent authority i.e. the Executive Committee/Vice President of the Society. The appointment, thus, of Polly Shera on the post of Accounts Officer cannot be said to be in accordance with the regulations applicable for appointment to the employees of the Society.

12. The stand of the Management that the claimant was not a workman and was performing the managerial/supervisory functions cannot be accepted keeping in view the nature of work and the duties performed by him. The conclusion, therefore, as drawn by the Industrial Tribunal-cum-

Labour Court, Chandigarh, cannot be said to be illegal. The work performed by Polly Shera-claimant primarily was clerical in nature and, therefore, he has rightly been said to be within the scope of the definition of 'workman' as provided under Section 2 (s) of the Industrial Disputes Act .

13. It is true that the workman-claimant has been serving the Management from the year 1986 till the date of his termination on 30.01.2006 i.e. almost 20 years but since his appointment was on purely temporary basis and he had been continuing with the Management without the approval of the competent authority and with no sanctioned post, the Award passed by the Labour Court denying him reinstatement and instead granting him lump-sum compensation, cannot be faulted with. Even the amount of compensation, as granted, is justified keeping in view the fact that Indian Council for Child Welfare is a welfare society. There is no violation of the provisions of Section 25-G of the Industrial Disputes Act as after the termination of the claimant, no fresh appointment has been made as an Account Officer. The appointment, if any, has been made as an Accounts Assistant.

14. It would not be out of way to mention here that not only was the appointment of the claimant temporary, with there being no sanctioned post and without the approval of the competent authority but his name was also not sponsored by any Employment Exchange nor was the post advertised in the media for recruitment as per the regulations of the Council for appointment of staff. Therefore, he could not have been ordered to be reinstated in service.

15. In view of the above, finding no merit in any of these two writ petitions, the same are dismissed and the award of the Industrial Tribunal-

cum-Labour Court, U.T. Chandigarh dated 15.01.2013 (Annexure P-3) is,
hereby, upheld.

December 16, 2019

**(AUGUSTINE GEORGE MASIH)
JUDGE**

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No